IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.331 OF 2006
IN
CIVIL APPLICATION NO.250 OF 1992
IN
WRIT PETITION NO.3614 OF 1990

Kazi Rajiyuddin Zahurruddin
and Ors. .. Petitioners

Versus

Kazi Meer Chraguddin Gayasuddin
(deceased) through L/r. .. Respondents

Mr.Girish Godbole for petitioners
Mr.Mulla for respondents.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 26th November 2007

P.C.

. Heard parties. Perused the civil application. For the reasons set out therein, civil application is granted. Amendments to be carried out within two weeks.

(S.C.Dharmadhikari, J)

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Kazi Rajiyuddin Zahurruddin
and Ors. .. Petitioners
Versus
Kazi Meer Chraguddin Gayasuddin
(deceased) through L/r. .. Respondents

WITH

CIVIL APPLICATION NO.2800 OF 2007

Jilani Akbar Kokani .. Petitioner
Versus
Kazi Rajiyuddin Jahiruddin & Ors.. Respondents
Mr.Girish Godbole for petitioners
Mr.Mulla for respondents.

CORAM : S.C.DHARMADHIKARI, J.
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. In this petition, an application for withdrawal is made by petitioner No.2 based upon the fact that family dispute is resolved,

partition is effected, partition deed is executed and duly registered. In such circumstances, all the family members being satisfied with the resolution of the disputes and the clauses and recitals in the partition deed have authorised petitioner No.2 to apply for withdrawal of this petition, which application is supported by the family members and parties to the partition deed being respondents to this petition as well.

2. In these circumstances, on account of subsequent development Mr.Godbole, learned Counsel appearing for petitioners in this petition submits that he has instructions to apply for withdrawal of the petition.

3. Mr.Mulla, learned Advocate appearing in support of C.A.No.2800 of 2007 submits that this application has been taken out by one Jilani Akbar Kokani. This Jilani is, according to Mr.Mulla, purchaser and power of attorney holder

of respondent Nos. 7 to 9 and 11 to 32 to the main petition. Mr.Mulla's submission is that this power of attorney holder is now independently entitled to one of the immovable property which has been made subject matter of a specific document viz., Development Agreement dated 4th July 1997 as well as irrevocable general power of attorney. He submits that, therefore, the applicant is a necessary party to the petition, he having acquired an interest in the property which is specifically enforceable. In such circumstances, before even the withdrawal application is considered the civil application be granted, petitioners be directed to carry out amendments and thereafter appropriate orders be passed.

4. At the same time, Mr.Mulla submits that he does not object to the withdrawal of the petition provided he is impleaded as party respondent to the petition.

5. In my view, this is a simplicitor withdrawal of the proceedings by petitioners who have come to this Court aggrieved by some orders passed against them. Even if the petitioners apply on the basis of subsequent developments, orally, that they do not wish to argue the petition, nothing prevents them from withdrawing their own petition in the peculiar facts of this case. Even if respondent Nos. 4 to 32, according to the applicant, have sold, transferred, relinquished, assigned all their rights, title and interest in the suit premises by executing registered sale deed worded as Development Agreement and received sums thereunder, nothing prevents them or the petitioner to apply for withdrawal of proceedings. It is pertinent to note that the petitioners deny the contents of the civil application.

6. In my view, even if the applicant is allowed to be joined as party respondents, ultimately nothing would survive for this court to go into or adjudicate as the main petition does not survive. Hence, joinder of applicant in C.A.No.2800 of 2007 is purely academic issue. Having said that, in my view, the applicant is not without any remedy. Despite the arrangement between the petitioner and respondents, inter se or that the same having been duly registered or that the same having been placed on file of this Court or that this petition being withdrawn on that basis, does not prevent applicant from establishing his right, title and interest by initiating appropriate proceedings including filing of civil suit in competent civil court. Relief that can be claimed in law in such proceedings, remains unaffected by simplicitor withdrawal of petition. This court has not gone into rival contentions on merits of the controversy. Therefore, withdrawal of the

petition would not prevent the applicant from approaching competent civil court or other authority and praying therein for substantive relief so also interlocutory relief to protect his right, title and interest in the property, if any. All such pleas and contentions remain unaffected. Equally, it is for the respondents and petitioners to controvert them as and when such proceedings are served on them. Keeping open that controversy the Civil Application No.2800 of 2007 made by Jilani Akbar stands disposed of with liberty as above.

7. Writ Petition No.3614 of 1990 is allowed to be withdrawn. All interim orders to stand vacated forthwith. No costs. All civil applications do not survive after withdrawal of the petition and they are accordingly disposed of. However, Contempt Petition No.67 of 2007 be placed for admission.

8. In the light of what has been observed by me above, it is not necessary to advert to the decisions which have been cited by Mr.Mulla. Each of this decision is rendered during pendency of proceedings/suit or otherwise. In the instant case, as observed above, the principle would have no application as despite averments in the civil application, nothing prevents petitioners from applying for withdrawal of their own petition, which alone is done by them and which is only permitted by the Court.

(S.C.Dharmadhikari, J)